

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 17-21538-CIV-SEITZ/WHITE

ROBERT CHARLES LAMONS,

Movant,

vs.

UNITED STATES OF AMERICA,

Respondent.

ORDER ADOPTING IN PART REPORT AND CLOSING CASE

THIS CAUSE is before the Court on the Report of Magistrate Judge [DE-5], in which Magistrate Judge White recommends that Movant's letter/motion to the Court be construed as a petition pursuant to 28 U.S.C. § 2255, that it be dismissed as time-barred, and, in the alternative, that it be denied on the merits. The Report further recommends that if Movant objects to the recharacterization of his letter/motion as a § 2255 petition, that the motion be dismissed without prejudice. Movant has filed a letter/objections [DE-6] in which he states that he does object to the recharacterization of his original letter/motion as one brought pursuant to 28 U.S.C. § 2255, as it was simply a request for compassion and mercy, and that if the Court will not accept the letter/motion as such a request that the Court dismiss it as moot.

Movant maintains that his motion/letter, is not a petition seeking habeas relief but is a request for the Court to exercise its compassion in light of *Holloway v. United States*, 68 F. Supp. 3d 310 (S.D.N.Y. 2014). The Report, addressing Movant's reliance on *Holloway*, notes that this Court reduced Movant's sentence by 50% pursuant to a Rule 35 motion filed by the Government and, in response to Movant's *pro se* request for a further sentence reduction, this Court said that

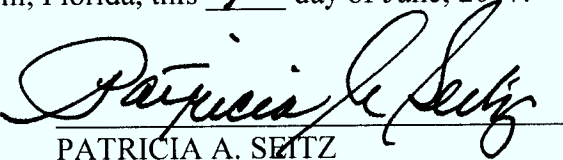
“[g]iven the nature of Defendant’s crimes, the Court would not have granted a greater reduction than the Court did for the substantial assistance in this case.” (DE-41 at 2 in Case No. 03-CR-20906). Thus, the Report found that *Holloway* does not support Movant’s request for relief because there is no indication in the record that this Court felt that Movant’s original sentence was disproportionately severe, as the judge in *Holloway* found. Further, in *Holloway*, the Government agreed not to oppose a motion to vacate two of Holloway’s convictions. There is no indication that the Government would be so willing here or that circumstances would justify such an outcome.

Thus, having carefully reviewed, *de novo*, Magistrate Judge White’s Report, the record, and Movant’s objection, it is

ORDERED that:

- (1) The above-mentioned Report of Magistrate Judge [DE-15] is AFFIRMED and ADOPTED to the extent that it recommends dismissal without prejudice of Movant’s Motion [DE-1] if Movant objects to the recharacterization of his motion.
- (2) Movant’s letter/motion [DE-1] is DISMISSED without prejudice.
- (3) All pending motions not otherwise ruled upon in this Order are DENIED AS MOOT.
- (4) This case is CLOSED.

DONE AND ORDERED in Miami, Florida, this 15th day of June, 2017.


PATRICIA A. SEITZ
UNITED STATES DISTRICT JUDGE

cc: All counsel of record/*Pro se* parties